

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAVON MARSHALL, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

ESPN, INC., *et al.*,

Defendants.

Civil Action No. 3:14-cv-01945

Chief District Judge Kevin H. Sharp

LICENSING DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Defendants Outfront Media Sports, Inc. (f/k/a CBS Collegiate Sports Properties, Inc.);¹ IMG Worldwide, LLC (erroneously identified in the Complaint as “IMG Worldwide, Inc.”); IMG College, LLC; William Morris Endeavor Entertainment, LLC (erroneously identified in the Complaint as “William Morris Endeavors, LLC”); JMI Sports LLC; Learfield Sports LLC; T3 Media, Inc.; and TeleSouth Communications, Inc.² (collectively, the “Licensing Defendants”) move this Court pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Plaintiffs’ Complaint for failure to state a claim upon which relief may be granted.

In this putative class action, Plaintiffs – ten former college football and basketball players – complain that they have not been paid for the use of their names, images and likenesses in connection with televised broadcasts of college sports events in which they allegedly have

¹ Outfront Media Sports, Inc. (f/k/a CBS Collegiate Sports Properties, Inc.) joins in this Motion subject to and without waiver of its separate motion to dismiss for lack of personal jurisdiction.

² TeleSouth Communications, Inc. joins in this Motion subject to and without waiver of its separate motion to dismiss for lack of personal jurisdiction.

appeared. On this basis, Plaintiffs' Complaint purports to assert causes of action against the Licensing Defendants, as well as the "Broadcasting Defendants" (who more accurately refer to themselves as "Network Defendants") and the Conference Defendants, for violation of Section 1 of the Sherman Act, violations of Plaintiffs' purported rights of publicity, and other tagalong claims based upon Plaintiffs' purported publicity rights. *See* Complaint at Introduction, ¶¶ 1-3 (ECF No. 1).

The Licensing Defendants submit that the Plaintiffs' claims against them should be dismissed for the following reasons:

1. The Network Defendants and the Conference Defendants have separately moved for dismissal for failure of the Complaint to state a claim against those Defendants, and have set forth various grounds for their respective motions. To avoid duplication, pursuant to Fed. R. Civ. P. 10(c), the Licensing Defendants hereby incorporate by this reference the grounds set forth in the Network Defendants' Motion to Dismiss and supporting Memorandum of Law and in the Conference Defendants' Motion to Dismiss and supporting Memorandum of Law – filed concurrently with this Motion, which grounds apply equally as bases for dismissal of the claims alleged against the Licensing Defendants, including without limitation that 1) under Tennessee law, Plaintiffs have no publicity rights in the broadcasts of sporting events or in advertisements for such broadcasts; 2) Plaintiffs' state law causes of action are preempted by federal copyright law and barred by the First Amendment and the Tennessee Constitution; 3) Plaintiffs have failed to state a claim under the Lanham Act; and 4) Plaintiffs fail to plead multiple essential elements of an antitrust claim. To the extent the Network Defendants and the Conference Defendants state in their Motions and supporting Memoranda that the Complaint lacks a legally sufficient

allegation that those Defendants engaged in certain conduct, the Licensing Defendants assert the same reasons as to themselves.

2. In further support of the grounds for dismissal submitted by the other Defendants, the Licensing Defendants amplify and add that the United States Supreme Court has already conclusively resolved the antitrust issue in the Complaint, inasmuch as it held that the NCAA's amateurism rules, which Plaintiffs allege are anti-competitive, do not violate the Sherman Act and, in fact, are pro-competitive.

3. Other grounds are specifically reserved in the footnote below, in consideration of the grounds raised by all Defendants and the length of the briefs submitted by the three Defendant groups.³

4. In support of this Motion to Dismiss, the Licensing Defendants submit a separate memorandum of law, which incorporates the memoranda of law filed by the Conference Defendants and the Network Defendants. In addition, the Defendants have filed a Joint Notice of Filing of unpublished and other authorities.

Based upon the foregoing grounds, upon the Licensing Defendants' Memorandum of Law, and upon the motions and memoranda filed by the Network Defendants and the Conference Defendants, the above identified Licensing Defendants move the Court to enter its order dismissing the Complaint with prejudice and at the cost of Plaintiffs.

The Filing User hereby represents that all signatories hereto agree to the filing of this document.

³ Certain of the Licensing Defendants, IMG Worldwide, LLC, IMG College, LLC, and William Morris Endeavor Entertainment, LLC join in this Motion subject to and without waiver of a separate defense of release.

Dated: December 10, 2014

Respectfully submitted,

/s/ W. Scott Sims

SIMS FUNK, PLC

W. Scott Sims
ssims@simsfunk.com
3310 West End Avenue
Suite 410
Nashville, TN 37203
Tel: (615) 292-9335
Fax: (615) 649-8565

- and -

JENNER & BLOCK LLP

Richard L. Stone
rstone@jenner.com
David R. Singer
dsinger@jenner.com
633 West 5th Street Suite 3600
Los Angeles, CA 90071-2054
Tel: (213) 239-5100
Fax: (213) 239-5199

Kenneth L. Doroshow
kdoroshow@jenner.com
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Tel: (202) 639-6027
Fax: (202) 661-4855

Attorneys for Defendants IMG Worldwide, LLC; IMG College, LLC; and William Morris Endeavor Entertainment, LLC

/s/ Louis P. Petrich, with permission
LEOPOLD, PETRICH & SMITH, P.C.

Louis P. Petrich
lpetrich@lpsla.com
Daniel M. Mayeda
dmayeda@lpsla.com
2049 Century Park East, Suite 3110
Los Angeles, CA 90067
Tel: 310-277-3333
Fax: 310-277-7444

- and -

EVERHART LAW FIRM PLC

Amy J. Everhart
amy@everhartlawfirm.com
Maria A. Spear
maria@everhartlawfirm.com
1400 Fifth Avenue North
Nashville, TN 37208
Tel: (615) 800-8919
Fax: (615) 800-8918

Attorneys for Defendant JMI Sports LLC

/s/ Walker W. Jones, III, with permission
**BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC**

Walker W. Jones, III
wjones@bakerdonelson.com
W. Scott Welch
swelch@bakerdonelson.com
Samuel D. Gregory
sdgregory@bakerdonelson.com
P O Box 14167
Jackson, MS 39236-4167
Tel: (601) 351-2400
Fax: (601) 351-2424

John S. Hicks
jhicks@bakerdonelson.com
211 Commerce Street
Suite 800
Nashville, TN 37201
Tel: (615) 726-5600

*Attorneys for Defendant TeleSouth Communications,
Inc.*

/s/ Robb S. Harvey, with permission
WALLER, LANSDEN, DORTCH & DAVIS, LLP

Robb S. Harvey
robb.harvey@wallerlaw.com
Todd R. Hambidge
todd.hambidge@wallerlaw.com
Nashville City Center
511 Union Street
Suite 2700
Nashville, TN 37219
Tel: (615) 244-6380
Fax: (615) 244-6804

Attorneys for Defendant T3 Media, Inc.

/s/ Thomas B. Walsh, IV, with permission
FISH & RICHARDSON P.C.

Thomas B. Walsh, IV
walsh@fr.com
Thomas M. Melsheimer
melsheimer@fr.com
M. Brett Johnson
johnson@fr.com
Grant Schmidt
gschmidt@fr.com

pro hac vice admissions pending

1717 Main Street
Suite 5000
Dallas, TX 75201
Tel: (214) 747-5070
Fax: (214) 747-2091

- and -

WISEMAN ASHWORTH LAW GROUP PLC

Gail Vaughn Ashworth
gail@wisemanashworth.com
511 Union Street
Suite 800
Nashville, TN 37219-1743
Tel: (615) 254-1877
Fax: (615) 254-1878

Attorneys for Defendant Learfield Sports LLC

/s/ John S. Hicks, with permission
**BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC**

John S. Hicks
jhicks@bakerdonelson.com
211 Commerce Street
Suite 800
Nashville, TN 37201
Tel: (615) 726-5600

Walker W. Jones, III
wjones@bakerdonelson.com
W. Scott Welch
swelch@bakerdonelson.com
P O Box 14167
Jackson, MS 39236-4167
Tel: (601) 351-2400
Fax: (601) 351-2424

- and -

GIBSON, DUNN & CRUTCHER
Robert C. Walters
rwalters@gibsondunn.com
Brian E. Robison
brobison@gibsondunn.com
2100 McKinney Avenue
Suite 1100
Dallas, TX 75201
Tel: (214) 698-3100
Fax: (214) 571-2900

*Attorneys for Defendant Outfront Media Sports, Inc.
(f/k/a CBS Collegiate Sports Properties, Inc.)*

CERTIFICATE OF SERVICE

I certify that on December 10, 2014, I caused the foregoing Licensing Defendants' Motion To Dismiss the Complaint to be electronically filed via the Court's CM/ECF System. Counsel for all parties will be served via the Court's CM/ECF system at the email addresses on file.

Date: December 10, 2014

/s/ W. Scott Sims